

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	Case No. 1:10 MD 2196
Polyurethane Foam Antitrust Litigation	ORDER GRANTING <u>LETTERS ROGATORY</u>
This document related to: ALL CASES	JUDGE JACK ZOUHARY

Pending before this Court is Direct Purchaser, Indirect Purchaser, and Direct Action Plaintiffs' ("Plaintiffs") Motion for Issuance of Letters Rogatory (Doc. 803). Plaintiffs seek the deposition testimony of four former Foamex employees -- Michael Calderoni, Anthony Dacosta, Doug Dolphin, and Al Zinn -- and certain relevant documents those former Foamex employees may still possess. Plaintiffs state these four former Foamex employees are now located in Canada. Plaintiffs represent that Vitafoam and Domfoam employees have identified each individual as a "co-conspirator" in the alleged price-fixing and customer allocation conspiracy that is the subject of this multidistrict litigation (Doc. 803-1 at 1). Defendant FXI-Foamex reviewed the Motion, and has indicated it has no position on the matter (*id.*).

The materials Plaintiffs seek are relevant to this action, and, according to Plaintiffs, not obtainable through any other source, including through FXI-Foamex itself (*see, e.g.*, Doc. 803-2 at 7). Because Canada is not a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, letters rogatory, proper under Canadian law (*see* Canadian Evidence Act, R.S.C. 1985, c. C-5, s. 46) are the appropriate method for obtaining this relevant information.

This Court has reviewed the proposed Letters Rogatory (Docs. 803-2, 803-3, 803-4, 803-5) and finds them proper. Plaintiffs' Motion (Doc. 803) is granted.

IT IS SO ORDERED.

s/ Jack Zouhary  
JACK ZOUHARY  
U. S. DISTRICT JUDGE

November 20, 2013